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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/330,690	06/11/99	MAMEDOV E	A98322US

001200 IM22/1031
AKIN, GUMP, STRAUSS, HAUER & FELD
711 LOUISIANA STREET
SUITE 1900 SOUTH
HOUSTON TX 77002

EXAMINER	
WOOD,E	
ART UNIT	**PAPER NUMBER**
1755	5

DATE MAILED: 10/31/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 09/330,690	Applicant(s) Mamedov et al.
	Examiner Elizabeth D. Wood	Group Art Unit 1755

☒ Responsive to communication(s) filed on *Aug 21, 2000*.

☒ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire *3* month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) *1 and 3-10* is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) *1 and 3-10* is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐approved ☐disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Specification

The specification has not been checked to the extent necessary to determine the presence of **all** possible minor errors (grammatical, typographical and idiomatic). Cooperation of the applicants is requested in correcting any errors of which applicants may become aware of in the specification, in the claims and in any future amendment(s) that applicants may file.

Applicants are also requested to complete the status of any copending applications referred to in the specification by their Attorney Docket Number or Application Serial Number, **if any**.

The status of the parent application(s) and/or any other application(s) cross-referenced to this application, **if any**, should be updated to facilitate the prosecution of this application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicants are advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

The rejections over U.S. Patent 4,219,671 to Slinkard and U.S. Patent No. 6, 063, 728 to Hinago are withdrawn in view of applicants' arguments and amendments.

Claims 1 and 3-10 remain rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,139,988 to Sasaki et al.

Sasaki et al. disclose catalyst compositions that are mixed metal oxides containing iron, antimony, vanadium and at least one of (which includes mixtures) alkali or alkaline earth metals and aluminum which read on the herein claimed compositions. The difference between the instant

claims and the prior art is that the prior art does not identically disclose the amounts of each component present as is herein claimed. However, there is overlap between the catalyst ingredients and it is well settled that overlapping subject matter constitutes a prima facie case of obviousness. See particularly column 2.

Applicants' amendment to the claims points out that the instant composition is amorphous which "differs" from the Sasaki et al. disclosure. The examiner takes the position that the Sasaki et al. disclosure teaches both amorphous and crystalline materials and therefore reads on the instantly claimed invention. The applicants should note that it is the intermediate iron antimonate of the examples of Sasaki et al. that is taught to be crystalline, and there is no specific evidence that the final product is also crystalline. However, assuming arguendo that the final product is the same structure as the intermediate, it is pointed out that the Sasaki et al. disclosure still clearly envisions such material as a non-preferred embodiment, for example in the comparative examples. Accordingly, the examiner considers that there is ample evidence on this record that would support the obviousness of the instantly claimed invention over the composition disclosed by Sasaki et al.

Response to Amendment/Arguments

Applicants' arguments filed August 21, 2000 have been fully considered but they are not persuasive to the extent set forth hereinabove.

Conclusion

THIS ACTION IS MADE FINAL. Applicants are reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Liz Wood whose telephone number is (703) 308-3802.

Elizabeth D. Wood
Primary Patent Examiner
Group Art unit 1755

October 30, 2000